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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,591	05/26/2000	Robert A. Levy	11819-002001	9499

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EXAMINER

WON, YOUNG N

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 10/17/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/580,591

Applicant(s)

LEVY, ROBERT A.

Examiner

Young N Won

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-35 have been re-examined and are pending with this action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-9, 11-15, 18, 19, 21-24 and 26-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Skinner et al. (US 5963914A).

As per claims 1, 11, 12, 21, 28, 30, 32, and 34, Skinner teaches of a system, a method, and an apparatus comprising a computer-readable medium or memory that stores computer instructions and a processor (see col.9, line 52) that executes the

computer instructions for implementing an application for obtaining information about the work activities of a plurality (see col.3, lines 4-6) of employees (see abstract, 1st sentence and col.7, lines 54-60), comprising: a server for providing a site through which each of the plurality of employees creates a profile of the work activities of the employee (see col.20, lines 35-45); and a computer capable of accessing the site over a network, each of the plurality of employees using the computer to create the profile of the work activities of the employee and transmit the information about the work activities of the employee to the server (see col.2, lines 43-54 and line 67 to col.3, line 3); wherein the server calculates a value for the profile of the work activities of the employee (see col.18, lines 4-7) and performs an analysis of the work activities of the plurality of employees based on the profiles of the work activities of the employees (see col.3, lines 49-53).

As per claim 2, Skinner further teaches wherein the server is capable of performing an analysis of the work activities of the employee based on the profile of the work activities of the employee and the calculated value (see col.4, lines 24-51).

As per claims 3, 13, 22, 29, 31, 33, and 35, Skinner further teaches wherein the server is capable of generating a report based on the work activities of the employee in the profile and the calculated value for the profile or analysis (see claim 2 rejection above and col.4, lines 54-61).

As per claim 4, Skinner further teaches wherein the network is a network known as the Internet (see col.5, lines 36-37).

As per claims 5 and 6, Skinner teaches of further comprising a database (see Fig.1, #106 and col.4, lines 61-67) including work activity values for work activities of the employee in the profile and a database including a directory of work activities used to create the profile (see col.4, lines 24-51 and col.5, lines 1-10). **(Note:** By employing another database does not necessitate an invention, for optimization, databases are added or replaced with larger databases, according to memory requirements and cost, and the allocation of data within that database can be segmented as desired, therefore the addition of another database does not change the functionality of the claimed invention.)

As per claim 7, Skinner further teaches wherein the profile contains a plurality of groups of work activities (see col.3, lines 49-56 and col.4, lines 29-32).

As per claims 8, 19, and 27, Skinner further teaches wherein the employee assigns a percentage of the employee's time to each group of work activities in the profile (see col.1, lines 38-40; col.4, lines 39-43; and col.16, line 46 to col.17, line 20).

As per claim 9, Skinner further teaches wherein a work activities group value is calculated for each group of work activities (see col.3, lines 14-18 and col.5, lines 54-57).

As per claims 14, 15, 23 and 24, Skinner teaches of further comprising adding and deleting work activities of the employee to the profile (see col.3, lines 37-18 & lines 49-53 and col.4, lines 40-41).

As per claims 19 and 26, Skinner teaches of further comprising, assessing a capability of the employee with respect to the work activities in the profile (see col.2, lines 3-4 & lines 57-62).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner et al. (US 5963914A) in view of Garg et al. (US 6453346 B1).

As per claims 10 and 20, Skinner does not teach wherein the work activities group values for the groups of work activities are weighted to calculate the value for the profile. Garg teaches of calculating values that are weighted (see col.9, lines 29-39). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the teachings of Garg within the system of Skinner by implementing a calculating means by using weighted values within the work activities obtaining method because Skinner teaches that his system has a log file for logging activities (see col.4, lines 39-43) and Garg teaches the weighted values are used to update a change to the log for performance recordation (see col.9, lines 40-42).

As per claim 17, Skinner does not teach of further comprising, converting the value for the profile to a local geographic equivalent value. Garg teaches of converting values (see col.9, lines 29-39), but Skinner and Garg, do not teach that the values are from profile to geographic equivalent. However, these differences are only found in nonfunctional descriptive material and are not functionally involved in the step recited. The converting step would be performed the same regardless of the data. Thus this descriptive material will not distinguish the claimed invention from the prior arts in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made convert any value because such data does not functionally relate to the step in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

4. Claims 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner et al. (US 5963914A) in view of Homan et al. (US 6275570 B1).

As per claims 16 and 25, Skinner does not teach of further comprising providing a template for the employee to create the profile. Homan teaches providing a template for creating a profile (see col.6, lines 49-54). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the teachings of Homan within the system of Skinner by implementing a template for creating a profile within the work activities obtaining method because Homan teaches that with the use of

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a template, the server can create an appropriate SMTP address for the subscriber (user or employee) (see col.6, lines 54-57) to allow an administrator to construct information pertaining to the subscriber in the database (see col.6, lines 38-48).

Response to Arguments

5. Applicant's arguments filed August 22, 2003 have been fully considered but they are not persuasive. Skinner clearly teaches all the elements of the claim.

In response to applicant's arguments, the recitation "for obtaining information about the work activities of a plurality of employees" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The applicant is reminded that the reference is not in prosecution, but rather the applicant's claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., A. "types of tasks done by an employee, so that an employee can properly staff projects and can establish more appropriate salary ranges for given jobs" and B. "employee who can create the profile of his/her own work activities") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regards to A. mentioned above, the examiner believes that the actions of a user (employee) in regards to the reference are considered tasks such as network activity, keyboard activity, and so on. Additionally, Skinner teaches such limitation: "and how this work should be categorized by project and task with project" (see abstract); "The present invention relates generally to systems for recorded time expended in performing tasks" (see col.1, lines 12-13); and "provides information about continuous activity, as determined by each segment of user activity on a particular project, or task" (see col.5, lines 54-56).

With regards to B. mentioned above, what is stated in the claim is "the employee using the computer to create the profile..." which does not exclude the functionality of the computer creating the profile automatically from the use of the computer by the employee. Furthermore, Skinner teaches this limitation: "Certain activities in the log file are categorized as belonging to a specific task. For certain tasks, a user can define

certain time periods"; and "Block 204... To avoid collection of voluminous activities, a user can exclude such activities" (see col.9, lines 41-48).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Young N Won whose telephone number is 703-605-4241. The examiner can normally be reached on M-Th: 8AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T Alam can be reached on 703-308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Young N Won

A handwritten signature in black ink, appearing to read 'Young N Won', with a stylized, flowing script.

October 7, 2003

A handwritten signature in black ink, appearing to read 'Hosain Alam', with a stylized, flowing script.

HOSAIN ALAM
SUPERVISORY PATENT EXAMINER